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# IN THE
# COURT OF APPEALS OF INDIANA

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| IN THE MATTER OF THE INVOLUNTARY TERMINATIN OF PARENT-CHILD RELATIONSHIP OF M.J., MINOR CHILD, AND HIS MOTHER, APRIL JONES, | ) | |
| Appellant-Respondent, | ) | |
| vs. | ) | No. 49A05-0610-JV-584 |
| MARION COUNTY OFFICE OF FAMILY AND CHILDREN, | ) | |
| Appellee-Plaintiff, | ) | |
| And | ) | |
| CHILD ADVOCATES, INC. | ) | |
| Co-Appellee (Guardian ad Litem). | ) | |

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria M. Ransberger, Judge Pro-Tempore
Cause No. 49D09-0601-JT-2164

**May 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

April Jones appeals the involuntary termination of her parental rights with respect to her minor child, M.J., presenting the following restated issues for review:

1. Was the evidence sufficient to prove a reasonable probability that the conditions resulting in M.J.'s removal from Jones's care still exist or continuation of the parent-child relationship poses a threat to M.J.'s well-being?

2. Was the evidence sufficient to prove termination of the parent-child relationship was in M.J.'s best interests?

3. Did the trial court abuse its discretion in denying Jones's motion for continuance?

We affirm.

Jones is the biological parent of M.J., who was born on September 28, 2001. Jones used cocaine and marijuana during her pregnancy, and M.J. tested positive for cocaine when he was born, which was on September 28, 2001. Two weeks later, he was removed from Jones's care as a result of a petition filed by the Marion County Office, Division of Family and Children (MCODFC) that M.J. was a Child in Need of Services

(CHINS). As a result of the CHINS action, Jones was offered services. She completed a parenting assessment, home-based counseling, and drug and alcohol treatment. M.J. was thereafter returned to Jones's care.

On two separate occasions in September 2004, Jones left M.J. in the care of a man named Dewayne Brown while Jones went to work. On both occasions, M.J., who was approximately three years old at the time, wandered out of the house and went to a neighbor's house. Police were summoned on both occasions. The MCODFC again became involved and entered into a Service Referral Agreement (SRA) with Jones. An SRA permits the MCODFC to offer services without court involvement. Pursuant to the SRA, Jones agreed to participate in a home-based counseling program and submit to one random drug screen. In the drug screen that followed, Jones tested positive for marijuana and cocaine. On February 7, 2005, the MCODFC filed another CHINS petition, citing Jones's positive drug test and her failure to complete services offered under the SRA. At a May 24, 2005 hearing, Jones admitting using drugs and failing to complete services. M.J. was found to be a child in need of services. At a June 28, 2005 dispositional hearing, the court ordered M.J. removed from Jones's custody and placed in the custody of Jones's mother. Jones was ordered to complete a parenting assessment and parenting classes, undergo regular drug screens, and complete a drug treatment program. Referrals were made for drug treatment programs in July 2005, November 2005, and February 2006, but Jones did not complete a drug treatment program.

On January 18, 2006, the MCODFC filed a petition to terminate Jones's parental rights. After a February 24, 2006 intake assessment, Jones reported a few days later to Jon Fader, a drug counselor with MCODFC, who led an intensive outpatient drug treatment program. The program was an eight-week program, and the group met three times per week. Jones's attendance was so sporadic in the beginning that she was required to start over, which she did on April 10, 2006. Thereafter, until early June, Jones's attendance in the group sessions was irregular. In conjunction with the program, Jones was required to submit to a drug screen once per week. All of the screens prior to one taken in late May tested positive for both cocaine and marijuana. Fader told Jones that unless she had a clean test, he would recommend that she receive inpatient treatment or placement in a supported living facility. She did eventually submit a sample that tested positive for marijuana but not cocaine. Thereafter, on June 1, she submitted a sample that reflected a heightened level of THC, or marijuana, indicating continued current use. At that point, Fader discharged her from the program and recommended that she receive inpatient drug treatment or be placed in a supportive living environment. Jones declined to follow Fader's recommendation because she feared she would lose her job.

The trial court conducted a two-day termination hearing. On the first day, July 18, 2006, Jones testified that if she were tested that day, she would test positive for marijuana. She described marijuana use as "not a big thing." *Transcript* at 54. On

August 29, 2006, the court entered an order terminating Jones's parental rights. That order stated, in pertinent part:

> Referrals for drug treatment were made in July 2005, November 2005, and in February 2006.
>
> Mother never successfully complete drug treatment.
>
> Mother testified that marijuana is "not a big thing". Mother's attitude throughout the trial, other than at the end of trial, was cavalier and consistent with her lack of concern over her behavior.
>
> John Fader, drug counselor at FSA, testified that Mother took many drug screens while in Intensive Outpatient treatment with him, but all of them were drug positive.
>
> Mother started treatment with John Fader in February 2006.
>
> Mr. Fader testified that all of the screens beginning in March 2006 were positive for both cocaine and marijuana until May 18th, 2006, which was positive for marijuana only.
>
> When [M]other began testing positive for marijuana, but not cocaine, she was more erratic in her attendance at screens.
>
> Mr. Fader recommended Mother complete inpatient drug treatment because inpatient is a more protected environment, where Mother's behavior cannot be controlled at home or at night in the outpatient program.
>
> Mother was unsuccessfully discharged from the drug program.
>
> Mother told the casemanager [sic], Nicole Mallory, and John Fader that she would not do inpatient treatment.
>
> There is a reasonable probability that the conditions which resulted in the removal of the Child and the reasons for his continued placement outside the Mother's care will not be remedied, and that continuation of the parent-child relationship poses a threat to the Child's well-being.

> Mother's drug use has continued throughout this CHINS case, which was filed in February 2005. Further, Matthew was born cocaine-positive in 2001 and Mother was offered services through another CHINS case.
>
> Mother testified that she gave birth to another baby in early 2006, which she gave up for adoption, and that mother used drugs while pregnant with that baby as well.
>
> * * * * *
>
> Mother has failed to demonstrate an ability to provide for the mental, physical and emotional needs of the Child. Mother's comment that the child has 14 more years before he will be grown so that allowing her more time for services will not be harmful to the child, shows a gross lack of under standing [sic] and insight into the needs of a young child.
>
> The Child needs permanency and a stable loving home free from further neglect and endangerment. It is in the Child's best interest to terminate the parent-child relationship. A situation where the child is placed with a relative does not change the fact that children need permanency. So long as a child knows that at any point even after many months or years, they may be returned to a chaotic environment, bonding with permanency in mind is difficult if not impossible. Further, this child is already demonstrating emotional issues particularly with anger control and counseling will be instituted.

*Appellant's Appendix* at 9-10. Jones appeals the order terminating her parental rights.

Our court has deemed the involuntary termination of parental rights as "the most extreme sanction that a court can impose." *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*, *cert. denied*, 534 U.S. 1161 (2002). For this reason, termination is viewed as a last resort, to be pursued only when all other reasonable efforts have failed. *In re L.S.*, 717 N.E.2d 204. Parental rights are not terminated in order to punish the parents, but rather to protect their children. *Id*. Thus, although parental rights are of

constitutional dimension, they may be terminated when the parents cannot or will not fulfill their parental responsibilities. *Id*.

In order to effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the elements set out in Ind. Code Ann. § 31-35-2-4(b)(2) (West, PREMISE through 2006 Second Regular Session). Those elements are:

> (B) there is a reasonable probability that:
>
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
>
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
>
> (C) termination is in the best interests of the child; and
>
> (D) there is a satisfactory plan for the care and treatment of the child.

The issues presented by Jones challenge the sufficiency of evidence supporting the termination of her parental rights with respect to elements (B) and (C) above. In determining whether sufficient evidence supports the termination of parental rights, as is the case with other sufficiency challenges, we neither reweigh the evidence nor judge the credibility of witnesses. *In re Involuntary Termination of Parent Child Relationship of A.H.*, 832 N.E.2d 563 (Ind. Ct. App. 2005). We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom. *Id*. We will not set aside an order terminating parental rights unless it is clearly erroneous. *Id*.

1.

Jones contends the evidence was not sufficient to prove there is a reasonable probability that the conditions resulting in M.J.'s removal will not be remedied.

M.J. was removed from Jones's home because Jones tested positive for cocaine when M.J. was approximately three years old. It must be remembered that M.J. was also removed from Jones's care shortly after birth because blood tests on M.J. confirmed that Jones had used cocaine while she was pregnant with him. Although she was given more than three years to address and overcome her drug addiction and offered numerous services to help her in that endeavor, she failed to do so. Moreover, even at the final hearing, she evinced a cavalier attitude toward her use of marijuana.

Drug therapist Fader testified that Jones consistently tested positive for both marijuana and cocaine while she participated in his program, and that her only chance for success would involve placement in a more restricted environment, such as inpatient therapy or living in what Fader described as a "recovery house." *Transcript* at 94. In response to Jones's counsel's request at the hearing for a continuance that would allow Jones time to seek more intensive therapy, the attorney for MCODFC stated:

> [A]llowing mom more time to get inpatient treatment and become free of drugs, is not something that our office feels would be beneficial. This is not a problem that she's had since '05, it's a problem she's had since '01. So it's a five year drug addiction. Exhibits that have been submitted, show that [M.J.] tested positive for cocaine at birth. Mother has since had

> another drug positive baby, recently.[1] So she's had five years to get clean. She's not done it yet, and we'd like to conclude this trial today.

*Id.* at 116 (footnote supplied).

Therefore, there was sufficient evidence to prove a reasonable probability that the conditions resulting in M.J.'s removal from Jones's home, i.e., her drug usage, will not be remedied. Because we have reached this conclusion, we need not determine "whether the continuation of the parent-child relationship poses a threat to the well-being of the child" within the meaning of I.C. § 31-35-2-4(b)(2)(B)(ii). *See In re D.D.*, 804 N.E.2d 258 (Ind. Ct. App. 2004), *trans. denied* (because the elements of I.C. § 31-35-2-4(b)(2)(B) are set forth in the disjunctive, the State need prove only one of the two).

2.

Jones contends the evidence was not sufficient to prove termination of the parent-child relationship was in M.J.'s best interests.

The best interests of the child are the ultimate concern in termination proceedings. *Castro v. State Office of Family & Children*, 842 N.E.2d 367 (Ind. Ct. App. 2006), *trans. denied*. In determining what is in the best interests of a child, the trial court must look beyond the factors identified by the MCODFC and look also at the totality of the evidence. *In re D.L.*, 814 N.E.2d 1022 (Ind. Ct. App. 2004), *trans. denied*. In so doing, the trial court must subordinate the parent's interests to those of the child. *Id*. We have

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[1] On January 22, 2006, Jones gave birth to a child that tested positive for cocaine. She admitted using drugs while she was pregnant with that child. She gave up that baby for adoption.

previously determined that the testimony of a child's guardian ad litem concerning the child's need for permanency supports a finding that termination is in the child's best interests. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185 (Ind. Ct. App. 2003). In this case, Gale Sickle, M.J.'s guardian ad litem, testified that it would not be in M.J.'s best interests to delay a final determination in order to give Jones more time to overcome her drug addiction, because the guardian ad litem believed that would ultimately not succeed. The guardian ad litem further opined that termination of Jones's parental rights and then adoption by someone else would be in M.J.'s best interests. Nicole Mallory, M.J.'s case manager, also testified that termination of Jones's parental rights would be in M.J.'s best interests. She testified that M.J. was "doing fine" with his grandmother, who was seriously considering adopting M.J. *Transcript* at 74.

We conclude that the MCODFC proved by clear and convincing evidence that termination of Jones's parental rights would be in M.J.'s best interests.

3.

Finally, Jones contends the trial court abuse its discretion in denying her motion for continuance.

The decision whether to grant a motion for a continuance rests within the trial court's sound discretion. *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615 (Ind. Ct. App. 2006), *trans. denied*. Such decision will be reversed only for an abuse of that discretion. *Id*. "An abuse of discretion may be found in the denial of

a motion for a continuance when the moving party has shown good cause for granting the motion." *Id*. at 619.

Jones sought a continuance in order to afford her another opportunity to seek treatment for her drug addiction. On the face of it and without considering any other facts or factors, that certainly constitutes good cause for granting a motion to continue a termination proceeding. Undeniably, the best possible outcome in termination cases is for a parent to overcome whatever problems prevent them from being an effective parent and thereafter to assume their parental role. The question before the trial court in the instant case was, what was the likelihood that granting a continuance would achieve this result? On the facts of this case, that means the case for granting a continuance becomes more compelling as the likelihood increases that Jones would thereby overcome her drug dependency.

Jones had been battling an addiction to cocaine and marijuana since before M.J.'s birth. Multiple attempts at treatment programs were unsuccessful. When Fader determined after repeated unsuccessful attempts at outpatient treatment that the only reasonable chance for success lay in inpatient treatment or living in a restrictive-environment facility, he recommended that Jones enter one of those treatment modalities. She refused. Were there no detriment in waiting and allowing Jones still more time to try yet again, the decision whether to sanction further delay would be relatively simple. But, there is a cost in delaying. We have observed that delays in adjudicating termination cases impose a strain upon the children involved and exact "an intangible cost" to their

lives. *In re E.E.*, 853 N.E.2d 1037, 1043 (Ind. Ct. App. 2006), *trans. denied*. Thus, the trial court was forced to decide whether the likelihood of success justified the cost of delay upon M.J.'s life. In view of Jones's history of drug abuse and her ongoing failure to effectively address this problem, the court decided that the likelihood of success was too low to justify subjecting M.J. to further delay. We agree with both the ruling and its rationale. The trial court did not abuse its discretion in denying Jones's motion for continuance.

Judgment affirmed.

BAKER, C.J., and CRONE, J., concur.